



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/172233

PRELIMINARY RECITALS

Pursuant to a petition filed February 17, 2016, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Wood County Human Services - WI Rapids in regard to FoodShare benefits (FS), a hearing was held on April 12, 2016, at Elkhorn, Wisconsin.

NOTE: On February 17, 2016, Petitioner filed an appeal of the same tax intercept / overpayment, under her own name only. On March 1, 2016, a hearing was scheduled for Petitioner, with Walworth County, for March 17, 2016.

At some unidentified time, Hearings and Appeals determined that Petitioner also intended to include in the February 17th hearing request, her two daughters. Petitioner's hearing was rescheduled for April 12, 2016, so that it could take place on the same day as the hearings for her daughters.

The issue for determination is whether Petitioner's appeal is timely filed.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

|

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED], Resolution Coordinator
Wood County Human Services - WI Rapids
220 Third Avenue South
Suite 4
Wisconsin Rapids, WI 54495

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Walworth County.
2. On October 17, 2013, the county agency sent the Petitioner two Notifications of FS Overissuance:
 - Claim number [REDACTED], indicating that she was overpaid \$2290.00 in FoodShare benefits for the period of April 1, 2012 to November 30, 2012.
 - Claim number [REDACTED], indicating that she was overpaid \$1746.00 for the period of December 1, 2012 to May 31, 2013. The notices included an overpayment worksheet.

(Exhibit 13)
3. On November 4, 2013, the county agency sent the Petitioner a repayment agreement. (Exhibit 15)
4. On December 3, 2013, January 3, 2014 and February 4, 2014, the county agency sent the Petitioner dunning notices or reminders about the debt. (Exhibit 14)
5. On May 15, 2015, the Public Assistance Collections Unit sent the Petitioner a notice, advising her that her state tax refunds would be intercepted to satisfy the remaining \$3,292.00 remaining on the balance of the overpayment. (Exhibit 18)
6. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on February 17, 2016. (Exhibit 1)
7. Petitioner's daughter, [REDACTED] was born in March 1994, so during the time of the overpayment period she was 18-19 years old. (Testimony of Petitioner's mother)

DISCUSSION

A party has 30-days from the date of the letter/notice of tax intercept to file an appeal. Wis. Stat., §49.85(3)(a)2; FSH §7.3.2.11 Petitioner's appeal was filed in February 2016, much more than 30-days from the May 15, 2015 date of the tax intercept notice. As such, her appeal is untimely and no jurisdiction exists to review the merits of her appeal of the tax intercept.

In addition, appeals of overpayment determinations must be filed within 90 days of the date of the overpayment notice. *See* 7 CFR 273.15(g) and *FoodShare Wisconsin Handbook (FSH)* §6.4.1.1 The county agency sent the Petitioner the overpayment notice in October 2013. Petitioner did not file her appeal until February 2016, over two years later. As such, her appeal of the underlying overpayment is also untimely and no jurisdiction exists to review the merits of that appeal.

Petitioner asserts that she was transient during the time in question, and so did not get all of the notices. However, she agrees that the addresses used were correct addresses. Wis. Stats. §891.46 creates a presumption that service has occurred upon mailing, stating that, “summonses, citations, notices, motions and other papers required or authorized to be served by mail in judicial or administrative proceedings are presumed to be served when deposited in the U.S. mail with properly affixed evidence of prepaid postage.” Further, “the mailing of a letter creates a presumption that the letter was delivered and received.” State ex. rel Flores, 183 Wis.2d 587 at 612, 516 N.w.2d 362 (1994) Thus, the party challenging the presumption bears the burden of presenting credible evidence of non-receipt. Id at 613 There is insufficient evidence in this record to rebut the presumption that the letter was delivered and received at the correct address.

Even if jurisdiction did exist to review the merits of Petitioner's appeal, she would not succeed.

The Petitioner argued that she should not be held liable for the overpayment, because she was told, incorrectly, that she did not need to report income earned by her daughter, ■■■, because ■■■ was still in school.

Per *FoodShare Wisconsin Handbook (FSH)* §4.3.2.2, income earned by persons 17 years or younger is disregarded until the month following the month the person turns 18, if the person is under the parental control of a food unit (Federal definition of household) member and if the person is enrolled in an elementary, high school, technical school or university.

It is undisputed that April 2012, the first month of the overpayment period, is the month after ■■■ turned 18. So, ■■■'s income did need to be reported, contrary to what the agency worker allegedly told Petitioner's mother.

Regrettably for Petitioner, it does not matter whose error caused the overpayment, it must be recovered. The federal regulation concerning FoodShare overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b), emphasis added; see also FoodShare Wisconsin Handbook, App. § 7.3.2.1.

Finally, Petitioner argues that it is not fair to hold her responsible for an overpayment caused by other people's mistakes or misunderstanding of information. The Petitioner's argument is an equitable one, meaning it is based upon what the Petitioner thinks is fair, not upon what the law requires. However, an administrative law judge does not possess any equitable powers but must apply the law as it is written.¹ As such, I have no authority to relieve the Petitioner of liability for the overpayment.

CONCLUSIONS OF LAW

Petitioner's appeal is untimely.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

¹ See, *Final Decision*, OAH Case No. A-40/44630, [by Timothy F. Cullen, Secretary, DHSS] Office of Administrative Hearings, n/k/a, Division of Hearings & Appeals- Work & Family Services Unit December 30, 1987)(DHSS); "An administrative agency has only those powers which are expressly conferred or can be fairly implied from the statutes under which it operates. [citation omitted]" *Oneida County v. Converse*, 180 Wis.2d 120, 125, 508 N.W.2d 416 (1993).

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 18th day of April, 2016

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 18, 2016.

Wood County Human Services - WI Rapids
Public Assistance Collection Unit